

**State of North Dakota
Department of Human Services
Division of Mental Health and Substance Abuse Services
1237 West Divide Avenue Ste 1C
Bismarck, ND 58501-1208**

**Request for Proposals from all
Interested Proposers for the
Problem Gambling Treatment**

RFP: 325-05-09-026

May 9, 2005

Procurement Officer: Don Wright
Division of Mental Health and Substance Abuse Services

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SCHEDULE OF EVENTS

	<u>Date</u>
RFP Release	05-10-05
Deadline for Receipt of Written Inquiries	05-23-05
Proposal Due Date	05-31-05
Applicant Award	06-14-05
Service Begins	07-01-05

Section I -- General Information

1.1 **General Information:** The Department of Human Services, Division of Mental Health and Substance Abuse Services (DMHSAS) is soliciting proposals for continued provision of gambling addiction treatment services in North Dakota. The successful applicant must deliver the treatment services using staff certified by the National Council on Compulsive Gambling as National Certified Gambling Counselors (NCGC).

The DMHSAS wishes, through this RFP, to maintain gambling addiction treatment accessibility at a level and in locales similar to present efforts. Currently Fargo and Minot offer daily services such as evaluations, treatment group and after care services. Fargo also offers Residential service. Bismarck and Grand Forks are served twice per month on an outreach basis. Williston maintains a part time office.

As the DMHSAS wishes to fund treatment services, to the extent funding allows, this contract will run from July 1, 2005 through June 30, 2007 at a cost up to, but not to exceed \$300,000.

The successful applicant will be required to work with the existing provider to transition current clients.

1.2 This RFP contains the instructions governing the proposals to be submitted, the services to be included therein, a description of the mandatory requirements, and desired outcomes. To be eligible for consideration, an applicant must meet the intent of all mandatory requirements. The Division will determine compliance with the intent of a mandatory requirement. If imperative language (shall, must) appears in any section of the RFP, it is considered to be mandatory.

North Dakota law provides that an interested party may protest a solicitation. If an interested party wishes to protest the content of this RFP, the protest must be received, in writing, by the procurement officer at least seven calendar days before the deadline for receipt of proposals.

An interested party may protest the award or proposed award of a contract. If an applicant wishes to protest the award of a contract or proposed award of a contract, the protest must be received, in writing, by the procurement officer within seven calendar days after the date the Notice of Intent to Award was issued.

- 1.3 Each applicant, by making a proposal, represents that:
- 1.3.1 This document has been read and constitutes acceptance of the terms, conditions, criteria, and requirements set forth in the RFP and will operate as a waiver of any and all objections to the contents of the RFP.
 - 1.3.2 The proposal submitted is based upon the understanding of the specifications and requirements described in this RFP.
- 1.4 Applicants requiring clarification or interpretation of any sections contained in this RFP shall make a written request to DMHSAS to be received prior to the deadline described in the Schedule of Events. Telephonic inquiries will not be permitted. Written inquiries regarding clarification of procedures must be addressed to:

Don Wright, Assistant Director
Division of Mental Health and Substance Abuse Services
1237 West Divide Avenue Ste 1C
Bismarck, ND 58501-1208
Phone: 701-328-8922
FAX: 701-328-8969
E-mail: sowrid@state.nd.us

Applicants with a disability that need an accommodation should contact the procurement officer prior to the deadline for receipt of proposals so that reasonable accommodation can be made.

Don Wright, Assistant Director
Division of Mental Health and Substance Abuse Services
1237 West Divide Avenue Ste 1C
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- 1.5 Don Wright is the sole point of contact from the date of release of this RFP until the selection of a successful applicant. Any interpretation, correction, or change of this RFP will be made by written addendum by the Division. Interpretations, corrections, or changes of this RFP made in any other manner will not be binding, and applicants shall not rely on such interpretations, corrections, or changes. Applicants may submit only one proposal for evaluation.

- 1.6 Each proposal must be submitted in one (1) original and three (3) copies. Proposals must be submitted in sealed packages or envelopes and clearly marked with the due date and the statement "CERTIFICATION OF PROBLEM GAMBLING TREATMENT PROVIDERS PROPOSAL, ATTENTION: Don Wright" in large print, using a felt-tip marker in a prominent position on the package or envelope. Electronic or facsimile copies will not be accepted. Proposals must be received by the DMHSAS no later than 5 pm, Central Time, on May 31, 2005.

Applicants mailing proposals should allow a sufficient mail delivery period to ensure timely receipt of their proposals. Proposals received after this time will not be accepted for consideration. All proposals must be mailed or delivered to:

Don Wright, Assistant Director
Division of Mental Health and Substance Abuse Services
1237 West Divide Avenue Ste 1C
Bismarck, ND 58501-1208

- 1.7 The proposal filed with the Division must be signed by an individual authorized to legally bind the person, partnership, company, or corporation submitting the proposal.

By signature on the proposal, an applicant certifies that it complies with:

- a. the laws of the State of North Dakota;
- b. North Dakota Administrative Code;
- c. all applicable local, state, and federal laws, code, and regulations;
- d. the applicable portion of the Federal Civil Rights Act of 1964;
- e. the Equal Employment Opportunity Act and the regulations issued by the federal government;
- f. the Americans with Disabilities Act of 1990 and the regulations issued by the federal government;
- g. all terms, conditions, and requirements set forth in this RFP;
- h. a condition that the proposal submitted was independently arrived at, without collusion;
- i. a condition that the offer will remain open and valid for the period indicated in this solicitation; and
- j. a condition that the firm and any individuals working on the contract do not have a possible conflict of interest (e.g. employed by the State of North Dakota).

If any applicant fails to comply with the provisions stated in this paragraph, the State reserves the right to reject the proposal, terminate the contract , or consider the contractor in default.

Vendors must be approved by time set for proposal opening. North Dakota law requires that every person or entity that desires to bid or submit a proposal for contracts for commodities or services be an approved vendor in order to be placed on the State's bidders list. An applicant that is not registered by the deadline for receipt of proposal will be determined to be non-responsive, and its proposal will be rejected.

To become an approved vendor, applicants must: 1) be registered with the North Dakota Secretary of State (fees apply), and 2) submit a completed Bidders List Application to the North Dakota Vendor Registry. Prospective applicants may access the Procurement Vendor Database on-line to verify whether their firm is currently on the bidders list. The bidders list that will be used for this solicitation is commodity code 952-21.

The Procurement Vendor Database, registration instructions and forms are available on-line at: <http://www.state.nd.us/csd/spo/vendor-resources.htm>. Contact the North Dakota Vendor Registry at 701-328-2773 or infospo@state.nd.us for assistance.

Field Code Changed

Field Code Changed

If an amendment to this RFP is issued, it will be provided to all applicants that were mailed a copy of the RFP and to those that have requested a copy of the RFP from the procurement officer, Don Wright.

- 1.8 The applicant must submit a project work plan, identifying a plan of action, schedule, milestones, and requested Division resources (other than support services) and planned contractor resources needed throughout each step of the project to completion.
- 1.9 All proposals will be reviewed by an evaluation team using a points earned matrix. In order to be considered, the proposal must first pass the compliance category (yes/no) as shown below:

Category	Percent of Total Points
Compliance with requirements specified in RFP (yes/no)	0%
Applicant qualifications and experience	25%
Scope of Service	50%
Budget and Budget Narrative	25%
TOTAL	100%

- 1.10 The State reserves the right to reject any proposals, in whole or in part. Proposals received from debarred or suspended vendors will be rejected. The procurement officer may reject any proposal that is not responsive to all of the material and substantial terms, conditions, and performance requirements of the RFP.

Applicants may not qualify the proposal nor restrict the rights of the State. If an applicant does so, the procurement officer may determine the proposal to be non-responsive and the proposal may be rejected.

The procurement officer may waive minor informalities that:

- do not affect responsiveness;
- are merely a matter of form or format;
- do not change the relative standing or otherwise prejudice other offers;
- do not change the meaning or scope of the RFP;
- are insignificant, negligible, or immaterial in nature;
- do not reflect a material change in the work; or
- do not constitute a substantial reservation against a requirement or provision

The State reserves the right to reject any proposal determined to be not responsive, and to reject the proposal of an applicant determined to be not responsible. The State also reserves the right to refrain from making an award if it determines it to be in its best interest.

In order to determine if a proposal is reasonably susceptible for award, communications by the procurement officer or the proposal evaluation committee are permitted with an applicant to clarify uncertainties or eliminate confusion concerning the contents of a proposal and determine responsiveness to the RFP requirements. Clarifications may not result in a material or substantive change to the proposal. The initial evaluation may be adjusted because of a clarification under this section.

After receipt of proposals, if there is a need for any substantial clarification or material change in the RFP, an amendment will be issued. The amendment will incorporate the clarification or change, and a new date and time established for new or amended proposals. Evaluations may be adjusted as a result of receiving new or amended proposals.

The preference given to a resident North Dakota applicant will be equal to the preference given or required by the state of the nonresident bidder. A "resident" North Dakota bidder, applicant, seller, or contractor is one that has maintained a bona fide place of business within this State for at least one year prior to the date on which a contract was awarded.

For a listing of state preference laws, visit the following website:
http://tpps.das.state.or.us/purchasing/pref-law/reciprocal_detail.php or contact the North Dakota State Procurement Office at 701-328-2683.

Field Code Changed

After final evaluation, the procurement officer may negotiate with the applicant of the highest-ranked proposal. Negotiations, if held, will be within the scope of the request for proposals and limited to those items that would not have an effect on the ranking of proposals. If the highest-ranked applicant fails to provide necessary information for negotiations in a timely manner, or fails to negotiate in good faith, the State may terminate negotiations and negotiate with the applicant of the next highest-ranked proposal.

If contract negotiations are commenced, they will be held at:

Division of Mental Health and Substance Abuse Services
1237 West Divide Avenue, Ste 1C
Bismarck, ND

If contract negotiations are held, the applicant will be responsible for all cost including its travel and per diem expenses.

If the selected applicant:

- fails to provide the information required to begin negotiations in a timely manner;
- fails to negotiate in good faith;
- indicates it cannot perform the contract within the budgeted funds available for the project; or
- if the applicant and the State, after a good faith effort, cannot come to terms, the State may terminate negotiations with the applicant initially selected and commence negotiations with the next highest ranked applicant.

After the completion of contract negotiation the procurement officer will issue a written Notice of Intent to Award and send copies to all applicants. The Notice of

Intent Award will set out the names and addresses of all applicants and identify the proposal selected for award. The scores and placement of other applicants will not be part of the Notice of Intent to Award.

The successful applicant named in the Notice of Intent to Award is advised not to begin work, purchase materials, or enter into subcontracts relating to the project until both the successful applicant and the State sign the contract.

The Division reserves the right to refrain from contracting with any and all applicants submitting a proposal. Neither the release of the RFP or the consequent execution of contracts obligates the Division to make any purchases.

- 1.11 Costs for developing and delivering responses to the RFP and any subsequent presentations of the proposals as requested by the Division are entirely the responsibility of the applicant. The Division is not liable for any expense incurred by applicants in the preparation and presentation of the applicant's proposals.
- 1.12 All proposals and other material submitted become the property of the State and may be returned only at the State's option. All proposals and related information, including detailed cost information, are exempt records and will be held in confidence until an award is made, in accordance with N.D.C.C. § 54-44.4-10(2).

Applicants may make a written request that trade secrets and other proprietary data contained in proposals be held confidential. Material considered confidential by the applicant must be clearly identified, and the applicant must include a brief statement that sets out the reasons for confidentiality. See the North Dakota Office of the Attorney General website for additional information. <http://www.ag.state.nd.us/OpenRecords/ORM.htm>

After award, proposals will be subject to the North Dakota open records law. Records are closed or confidential only if specifically stated in law. If a request for public information is received, the procurement officer, in consultation with the Office of the Attorney General, will determine whether the information is an exception to the North Dakota open records law, and the information will be processed appropriately.

- 1.13 The applicant shall keep informed of, and shall comply with, all applicable laws, ordinances, rules, regulations, and orders of the city, county, state, federal, or public bodies having jurisdiction affecting any work to be done to provide the services required.

- 1.14 Any agreements entered into by the Division, based on any contracts or awards resulting from this RFP, are subject to future appropriations by the North Dakota Legislature. Failure of the North Dakota Legislature to appropriate sufficient funds to cover these obligations shall render any agreements void and terminate any financial obligations hereunder. The Division concerned in this RFP warrants that it will request necessary funds in each appropriation period during which a contract is in effect.
- 1.15 At the conclusion of this selection process, the contents of all proposals will be placed in the public domain and will be open to inspection by interested parties. Trade secrets or proprietary information recognized as such and protected by law may be withheld if clearly identified as such in the proposal by the applicant.
- 1.16 The applicant is an independent contractor providing services for the Division and the State of North Dakota. See Attachment A, for a sample Department of Human Services contract. The applicant will not be considered an employee of the Division; nor will any employees of the Division under this contract be considered employees of the applicant under any subsequent contract or amendment to this contract unless otherwise expressed by the State of North Dakota.

SECTION II -- Contract Provisions and Terms

- 2.1 After the selection of the applicant, the Division will execute a contract with the successful applicant. The Division requires that the RFP, the proposal response of the applicant, and any formal addenda to the RFP be included as part of any contract documents.
- 2.2 Mutually agreeable changes may be made to the contract provided that the terms of the contract:
 - 2.2.1 Do not materially change the applicant's obligations to the Division as expressed in the applicant's offer (RFP response).
 - 2.2.2 Do not violate the constitution or laws of the State of North Dakota.
 - 2.2.3 Do not impose onerous obligations or conditions which materially change the value of the product or services to be provided to the Division.
 - 2.2.4 Do not contravene the requirements of the RFP.
- 2.3 Applicants must attach to the proposal a signed and dated statement which indicates applicant's agreement to the Applicant Assurances and the proposed contract terms contained in Attachment A.

The successful applicant will be required to sign and submit the contract attached to this RFP (Attachment A). The contractor must comply with the contract provisions set out in this attachment. Any objections to the contract provisions must be set out in the applicant's proposal. No alteration of these provisions will be permitted without prior written approval from the purchasing agency.

Applicants are instructed to contact the procurement officer in writing by the deadline set for questions with any concerns regarding the contract provisions.

Proposals including supplemental terms and conditions may be accepted, but supplemental conditions that conflict with those contained in this RFP or that diminish the State's right's under any contract resulting from the RFP will be

considered null and void. The State is not responsible for identifying conflicting supplemental terms and conditions before issuing a contract award. After award of contract:

- (a) if conflict arises between a supplemental term or condition included in the proposal and a term or condition of the RFP, the term or condition of the RFP will prevail; and
- (b) if the State's rights would be diminished as a result of application of a supplemental term or condition included in the proposal, the supplemental term or condition will be considered null and void.

2.4 The Division is interested in signing an initial contract for a period not to exceed June 30, 2007.

2.5 By submitting a response to this RFP, the applicant indicates the ability to enter into a contract by the contract execution date specified in the Schedule of Events.

2.6 Prices must not increase for the life of the initial contract.

2.7 Prices paid by the Division will be those prices on file with the Division. The applicant acknowledges that the Division has the right to adjust any invoice that reflects incorrect pricing.

2.8 The state and its political subdivisions are exempt from paying taxes and cannot assume payment of taxes owed by others. The state and its political subdivisions cannot waive the taxes of others or transfer their tax exempt status.

2.9 The RFP and the proposal will be considered part of the contract. Any ambiguity or inconsistency among these documents will be resolved by applying the following order of precedence:

The contract document and any amendments.

The RFP including any addenda or written clarifications.

All documents referenced by the RFP.

The applicant's proposal and any amendments or written clarifications.

A higher order document will supercede a lower order document to the extent necessary to resolve any inconsistencies between them; however, silence on any matter in a higher order document will not negate the provisions of a lower order document as to that matter.

- 2.10 An applicant may enter into a written subcontract(s) for performance of certain of its functions under the contract. Planned use of subcontractors must be clearly explained in the applicant's proposal. This includes, at a minimum, the name and address of and the scope of work to be performed by each subcontractor and the dollar amount of each subcontract. The applicant must notify and receive approval from the Division in advance of any subcontract. The subcontractor shall acknowledge the binding nature of the RFP and resulting contract and abide by such.
- 2.11 Joint ventures are acceptable. If submitting a proposal as a joint venture, the applicant must submit a copy of the joint venture agreement that identifies the principles involved and its rights and responsibilities regarding performance and payment.

Any joint venture agreement must confirm compliance with Section 1.7.

SECTION III -- Applicant Qualifications

- 3.1 The Division may make such investigations as deemed necessary to determine the ability of the applicant to perform the services specified.
- 3.2 In determining the capabilities of an applicant to perform the services specified herein, the following requirements shall be met by the applicant. (NOTE: Each item should be thoroughly addressed. Taking exception to any requirements listed in this section may disqualify the proposals):

The proposal shall demonstrate the financial stability to supply and support the services specified. A copy of the most recent financial statement, stockholder's report, audit, or other appropriate documentation must be submitted with the proposal.

- 3.3 The applicant may provide a further description and explanation of the applicants' capabilities and experience in the accreditation of applicants of human services or other related experience. The applicant may provide any information considered to be of interest to the Division in this area. Qualifications, experience and background of the staff applicant will utilize in fulfilling the terms of the contract must be provided.

ATTACHMENT A

CONTRACT #

GRANT AGREEMENT

WHEREAS, the State of North Dakota, acting through its North Dakota Department of Human Services, Mental Health and Substance Abuse Services, herein referred to as "Grantor" has determined the services referred to in the paragraph below entitled "Scope of Service" form an appropriate basis for the expenditure of funds allocated to the Grantor; and

WHEREAS, the GRANTEE herein referred to as "Grantee" proposes to provide those services;

NOW, THEREFORE, the Grantor and Grantee enter into the following:

I. TERM OF THE GRANT

The term of this agreement shall be from the ____ day of _____ 2005 through the ____ day of _____ 200____. However, this agreement may be terminated with or without cause upon thirty (30) days written notice by either party.

II. SCOPE OF SERVICE

The Grantee agrees to utilize grant funds to

III. COMPENSATION

The Grantor, upon written request from the Grantee, shall reimburse the Grantee for allowable expenses incurred, as defined by the OMB Circular cited under Section VIII of this agreement, while performing the scope of service. The total amount of this grant shall not exceed \$_____. No funds will be advanced prior to services actually being provided. Request for reimbursement by the Grantee should be sent monthly to the Grantor. **Final reimbursement requests shall be submitted to the Grantor no later than fifteen (15) days after the expiration of this agreement. No payment will be made until the Certification of the OMB Circular Informational Guide, which is attached by reference and made a part of this agreement, is appropriately signed and returned.**

Payment for services under this agreement may include federal monies. The funding sources at the time of the agreement execution are listed below. The funding source of actual payments and the federal program can be verified by contacting the Grantor's Fiscal Administration Division.

Anticipated Funding:

Federal	\$ _____	Other	\$ _____
State	\$ _____	Unknown	\$ _____

Catalog of Federal Domestic Assistance Number

IV. GRANTEE'S UNDERSTANDING OF TERM OF FUNDING

The Grantee understands that this grant is a one-time grant, and acknowledges that it has been furnished no assurances that this grant may be extended for periods beyond the termination date of this agreement.

V. GRANTEE ASSURANCES

The Grantee agrees to comply with the applicable assurances set forth in the Grantee Assurances attached as Attachment "A" and made a part of this agreement.

VI. AUTHORITY TO CONTRACT

The Grantee shall not have the authority to contract for or on behalf of or incur obligations on behalf of the Grantor. However, the Grantee may subcontract with qualified providers of services, provided that any such subcontract shall acknowledge the binding nature of this agreement, and incorporate this agreement, together with its attachments as appropriate. The Grantee agrees to be solely responsible for the performance of any subcontractor.

VII. INDEPENDENT ENTITY

The Grantee shall perform as an independent entity under this agreement. The Grantee, its employees, agents, or representatives are not employees of the Grantor for all purposes, including but not limited to: the application of the Social Security Act, the Fair Labor Standards Act, the Federal Insurance Contribution Act, the Federal Unemployment Act, the North Dakota Unemployment Compensation Law, and the North Dakota Workers' Compensation Act. No part of this agreement shall be construed to represent the creation of an employer/employee relationship. The Grantee will retain sole and absolute discretion in the judgment of the manner and means of carrying out the Grantee's activities and responsibilities under this agreement.

VIII. AUDIT RESPONSIBILITY AND EXPENSE ALLOWABILITY

The Grantee agrees to keep such financial records as are necessary to fully disclose the complete financial status of the agreement. These records shall be made available for review by the Grantor, or its agents upon request at any time during normal business hours. Further, it is agreed that if the Grantee has expended federal funds (when considering all sources) during the Grantee's fiscal year at the amount specified in OMB Circular A-133, *Audits of State, Local Governments, and Non-Profit Organizations*; which is attached by reference and made a part of this agreement, then such Circular shall be followed pursuant to the Single Audit Act of 1984, Public Law 98-502; and the Single Audit Act Amendments of 1996, Public Law 104-156. The Circular can be obtained from the Grantor's Fiscal Administration Division upon request. The Grantee agrees to file a copy of the "Reporting Package" as described by the referenced Circular with the Grantor's Fiscal Administration Division within the time frame identified in OMB Circular A-133. Further, the Grantee agrees to submit a contract closure report to the Grantor's Fiscal Administration Division within ninety (90) days after the contract end date.

Additionally, the Grantee agrees to spend all federal assistance received from the Grantor in accordance with applicable laws and regulations such as, but not limited

to: OMB Circular A-110, *Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations*; and OMB Circular A-122, *Cost Principles for Non-Profit Organizations*; which are attached by reference and made a part of this agreement. These Circulars can be obtained from the Grantor's Fiscal Administration Division upon request.

IX. RETENTION OF RECORDS

The Grantee agrees to retain financial records for a period of three years from the date of submission of the final expenditure report or if subject to audit, until such audit is completed and closed, whichever occurs later. The Grantor, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of the Grantee which are pertinent to the services provided under this agreement. Program records shall be maintained for a period of six years or until an audit is completed and closed, whichever occurs later.

X. TERMINATION OF AGREEMENT FOR CAUSE

If through any cause Grantee shall fail to fulfill in a timely and proper manner its obligations under this agreement, or shall violate any of the terms of this agreement, the Grantor shall thereupon have the right to terminate this agreement forthwith by giving written notice to Grantee of such termination and specifying the effective date thereof. Notwithstanding a termination pursuant to this paragraph, Grantee shall not be relieved of liability to the Grantor for damages sustained by the Grantor by virtue of any breach of the agreement by Grantee, and the Grantor may withhold any payment, otherwise due to Grantee, for the purposes of set off until such time as the exact amount of damages due is determined.

XI. TERMINATION OF AGREEMENT FOR INADEQUACY OF FUNDS

It is agreed that in the event appropriations to the Department of Human Services are not obtained and continued at a level sufficient to allow for payments to the Grantee, for the services identified in Paragraph II, the obligations of each party hereunder may be terminated, at the option of the Grantor, provided that any such termination shall be without prejudice to any obligations or liabilities of either party already accrued prior to such termination.

XII. CONTINGENT LIABILITY

During the term of this agreement, and for three years thereafter, the Grantee agrees to reimburse the Grantor for any claims, submitted by the Grantor for federal financial participation in the cost of this agreement, which are disallowed by any federal agency for a failure, on the part of the Grantee, to comply with the terms and conditions of this agreement, the applicable provisions of any federal or state statutory or regulatory provision which govern the source of funding. The Grantor agrees to give the Grantee prompt written notice of any disallowance of claims subject to reimbursement by the Grantee. Any amount disallowed in the manner and for the reasons described shall be considered a debt owing to the Grantor and action may be brought by the Grantor thereon in any manner prescribed by law.

XIII. INDEMNITY

Grantee agrees to defend, indemnify, and hold harmless the State of North Dakota, its agencies, officers and employees (North Dakota), from any and all claims of any nature, including all costs, expenses, and attorneys' fees, which may in any manner result from or arise out of this agreement, except for claims resulting from or arising out of North Dakota's sole negligence. The legal defense provided by Grantee to North Dakota under this provision must be free of any conflicts of interest, even if retention of separate legal counsel for North Dakota is necessary. Grantee also agrees to defend, indemnify, and hold North Dakota harmless for all costs, expenses, and attorneys' fees incurred in establishing and litigating the indemnification coverage provided herein. This obligation shall continue after termination of this agreement.

XIV. INSURANCE

A. **Required Coverages.** Grantee shall secure and keep in force during the term of this agreement, from insurance companies authorized to do business in North Dakota, the following insurance coverages covering the Grantee for any and all claims of any nature which may in any manner arise out of or result from this agreement:

- 1) Commercial general liability, including contractual coverage, with minimum liability limits of \$250,000 per person and \$1,000,000 per occurrence.
- 2) Professional errors and omissions including a three (3) year "tail coverage endorsement," with minimum liability limits of \$1,000,000 per occurrence and in the aggregate. In the alternative to obtaining the tail coverage endorsement, Grantee agrees to continue the insurance in place a minimum of three (3) years following completion of the work specified in this agreement.
- 3) Automobile liability, with minimum liability limits of \$250,000 per person and \$1,000,000 per occurrence.
- 4) Workers' compensation coverage meeting all North Dakota statutory requirements.

B. **General Insurance Requirements.** The insurance coverages listed above must meet the following additional requirements:

- 1) Any deductible or self-insured retention amount or other similar obligation under the policies shall be the sole responsibility of the Grantee. The amount of any deductible or self-retention is subject to approval by the Grantor.
- 2) This insurance may be in policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form, and must be placed with insurers rated "A" or better by A.M. Best Company, Inc., provided any excess policy follows form for coverage. The policies shall be in form and terms approved by the Grantor. "Follows form" means the excess policy must be written with the same terms and conditions as the policy to which it is excess.
- 3) North Dakota will be defended, indemnified, and held harmless to the full extent of any coverage actually secured by the Grantee in excess of the minimum requirements set forth above. The duty to indemnify North

Dakota under this agreement shall be not be limited by the insurance required in this agreement.

- 4) North Dakota shall be endorsed on the commercial general liability policy, including any excess policies (to the extent applicable), as additional insureds. North Dakota shall have all the rights and coverages as Grantee under said policies. The additional insured endorsement for the commercial general liability policy shall be written on a form equivalent to the ISO 1985 CG 20 10 form, or such other form as approved by North Dakota, and shall not limit or delete North Dakota's coverage in any way based upon North Dakota's acts or omissions.
- 5) The insurance required in this agreement, through a policy to endorsement, shall include:
 - a) a "Waiver of Subrogation" waiving any right of recovery the insurance company may have against North Dakota;
 - b) a provision that the policy and endorsements may not be canceled or modified without thirty (30) days' prior written notice to the undersigned Grantor representative;
 - c) a provision that any attorney who represents North Dakota under this policy must first qualify as and be appointed by the North Dakota Attorney General as a Special Assistant Attorney General as required by N.D.C.C. § 54-12-08;
 - d) a provision that Grantee's insurance coverage shall be primary (i.e., pay first) as respects any insurance, self-insurance or self-retention maintained by North Dakota and that any insurance, self-insurance or self-retention maintained by North Dakota shall be excess of the Grantee's insurance and shall not contribute with it;
 - e) cross liability/severability of interest coverage for all policies and endorsements.
- 6) The legal defense provided to North Dakota under the policy and any endorsements must be free of any conflicts of interest, even if retention of separate legal counsel for North Dakota is necessary.
- 7) Grantee shall furnish a certificate of insurance and, if requested, a copy of the insurance policy and all its endorsements, including the additional insured endorsement, to the undersigned Grantor representative prior to commencement of this agreement.
- 8) Failure to provide insurance as required in this section is a material breach of contract entitling Grantor to terminate this contract at any time effective upon delivery of notice to the Grantee.

XV. NOTICE

Any notice required or permitted to be given pursuant to this agreement may be personally served on either party by the party giving such notice, or may be served by certified mail, return receipt requested, addressed to the executive office of the party upon whom service is made.

XVI. INTEGRATION AND MODIFICATION

This contract constitutes the entire agreement between the Grantee and the Grantor. No alteration, amendment, or modification in the provisions of this agreement shall be effective unless it is reduced to writing, signed by the parties and attached hereto.

XVII. COLLATERAL CONTRACTS

Where there exists any inconsistency between this agreement and other provisions of collateral contractual agreements which are made a part of this agreement by reference or otherwise, the provisions of this agreement shall control.

XVIII. APPLICABLE LAW

This agreement shall be governed by and construed in accordance with the laws of the State of North Dakota.

XIX. ASSIGNMENT

Neither Party shall assign this agreement and rights without the written approval of the other Party. Such approval shall not be unreasonably withheld. This agreement shall be equally binding on the respective Parties, their successors and assigns.

XX. WORK PRODUCT, EQUIPMENT AND MATERIALS

All work product, equipment or materials created or purchased under this agreement belong to the Grantor and must be delivered to Grantor at Grantor's request upon termination of this agreement. Grantee agrees that all materials prepared under this agreement are "works for hire" within the meaning of copyright laws of the United States and assigns to the Grantor all rights and interests Grantee may have in the materials it prepares under this agreement, including any right to derivative use of the material. Grantee shall execute all necessary documents to enable the Grantor to protect its rights under this section. Use of work product or materials for purposes other than the scope of this agreement must be approved in writing by the Grantor.

XXI. COMPLIANCE WITH PUBLIC RECORDS LAWS

Grantee understands that, except for disclosures prohibited in Section XXIV, the Grantor must disclose to the public upon request any records it receives from Grantee. Grantee further understands that any records which are obtained or generated by the Grantee under this agreement, except for records that are confidential under Section XXIV, may, under certain circumstances, be open to the public upon request under the North Dakota open records law. Grantee agrees to contact the Grantor immediately upon receiving a request for information under the open records law and to comply with the Grantor's instructions on how to respond to the request.

XXII. ATTORNEY FEES

In the event a lawsuit is instituted by the Grantor to obtain performance due to any kind under this agreement, and the Grantor is the prevailing party, Grantee shall, except when prohibited by N.D.C.C. § 28-26-04, pay the Grantor's reasonable attorney fees and costs in connection with the lawsuit.

XXIII. ALTERNATIVE DISPUTE RESOLUTION – JURY TRIAL

The Grantor does not agree to any form of binding arbitration, mediation, or other forms of mandatory alternative dispute resolution. The parties have the right to enforce their rights and remedies in judicial proceedings. The Grantor does not waive any right to a jury trial.

XXIV. CONFIDENTIAL INFORMATION

The Grantee agrees not to use or disclose any information it receives from the Grantor under this agreement that is confidential or exempt from mandatory public disclosure except as necessary to carry out the purposes of this agreement or as authorized in advance by the Grantor. The Grantor agrees not to disclose any information it receives from the Grantee which the Grantee has previously identified as confidential and which the Grantor determines in its sole discretion is protected from mandatory public disclosure under a specific exception to the North Dakota open records law, North Dakota Century Code § 44-04-18. The duty of the Grantor and the Grantee to maintain confidentiality of information under this section continues beyond the term of this agreement, including any extensions or renewals.

GRANTEE

By _____ DATE

Its _____
(TITLE)

Grantee's Federal Identification Number

STATE OF NORTH DAKOTA

NORTH DAKOTA DEPARTMENT OF HUMAN SERVICES

By _____ DATE
CAROL K. OLSON
EXECUTIVE DIRECTOR

By _____ DATE
KRISTA L. ANDREWS
CONTRACT OFFICER